universal service."[805] We agree that such "new and growing source[s] of revenues should mitigate the impact of intercarrier compensation reform for rural and other carriers."[806]

309. We are concerned that universal service support be targeted to those companies whose reduced intercarrier compensation revenues truly are needed to continue providing quality service at affordable rates, and that it should not simply enable the company to pay bigger dividends to shareholders or pad a company's bottom line. We find that, because of their different regulatory treatment, price cap incumbent LECs and rate-of-return incumbent LECs should be treated differently. For price cap carriers, we adopt the proposal of various commenters to consider all a company's costs and revenues—both regulated and non-regulated—before providing new universal service support.[807] Thus, price cap incumbent LEC seeking universal service funding to replace lost intercarrier compensation revenues must make such a showing to the Commission when petitioning for such support.

310. We also agree with proposals that carriers fully avail themselves of existing opportunities for end-user recovery before collecting new universal service subsidies.[808] To the extent that regulators have determined that rates at a particular level are reasonable, we find it appropriate for carriers to charge those rates in the first instance, rather than pricing below those levels in order to foist recovery of the additional revenues on universal service contributors. Consequently, as additional preconditions for receiving new universal service support, a price cap carrier must show that its federal SLC, state SLC (if any), and state retail local service rates are at the maximum levels permitted under existing applicable law.[809]

311. In conjunction, we conclude that the conditions we adopt as prerequisites for obtaining new universal service support adequately target that support to carriers with a genuine need without unduly burdening consumers with excessive new universal service contribution burdens.[810]

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[805] Free Press Oct. 13, 2008 *Ex Parte* Letter at 6. *See also id.* at 6–7 ("While we'd like the Commission to consider a carrier's entire revenue stream before allowing increased USF support to offset lost access revenues" to the extent that there is such support it "should be confined to rate-of-return carriers only.").

[806] NASUCA July 7, 2008 Supp. Comments at 6. Indeed, there is some indication that carriers may be earning excessive returns even with respect to their regulated services. *See, e.g.*, GCI *Missoula Phantom Traffic* Comments at 66–67 (asserting that ACS of Anchorage has regularly earned returns in excess of an 11.25% rate of return on its regulated interstate switched access services, including 32.12% for 1997–98, 30.26% for 1999–2000; 35.29% for 2001–02; and 15.01% for 2003–04).

[807] *See, e.g.*, Letter from Mary C. Albert, Assistant General Counsel, COMPTEL, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 05-337, 04-36 at 1 (filed Oct. 2, 2008); NASUCA July 7, 2008 Supp. Comments at 32–34; Letter from Anna M. Gomez, Vice President of Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket No. 04-36 at 1–2 (filed Oct. 7, 2008).

[808] *See, e.g.*, Letter from Donna Epps, Vice President—Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket No. 04-36 at 1–2 (filed Oct. 2, 2008); Letter from Robert W. Quinn, Jr., Senior Vice President—Federal Regulatory, AT&T, to Kevin Martin, Chairman, FCC, CC Docket Nos. 01-92, 99-68, 96-45, WC Docket Nos. 07-135, 05-337 at 5–7 (filed July 17, 2008); Letter from Anthony M. Alessi, Senior Counsel, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 at 3–5 (filed May 23, 2008); Cox *ICC FNPRM* Comments at 12–13.

[809] Although we do not adopt a particular revenue benchmark here, as some commenters propose, the Joint Board may well recommend such an approach. Thus, depending upon the Joint Board's proposal, and the Commission's subsequent action, maximum federal SLCs and/or state retail local rates might be determined, in part, by such a benchmark.

[810] For these same reasons, should a carrier agree to (or tariff) intercarrier charges below those that would be

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312. We recognize that interstate rate-of-return carriers present a special situation, because under our rules they must be provided an opportunity to earn the rate of return established by our orders.[811] As a result, we find it inappropriate to impose the same conditions before interstate rate-of-return carriers can recover universal service support.[812]

(ii) Legal Authority

313. Consistent with our mandate to "ensure that universal service is available at rates that are just, reasonable, and affordable," we establish a new supplement to IAS and ICLS universal service funding mechanism.[813] As we did recently in two other Commission orders that reformed interstate switched access charges, we include here additional universal service funding to keep retail rates affordable while ensuring that maintaining affordable rates does not unduly threaten the financial viability of rate-regulated incumbent LECs.[814] Our decision to establish a new funding mechanism is also consistent with our general authority under section 4(i) of the Act because it furthers our universal service objectives.[815] Mindful of our obligation to ensure that these new subsidies are made available only where essential, however we make new universal service subsidies available subject to specific conditions that will target the support to only those carriers whose circumstances merit it.

(iii) Access to Universal Service Support

314. As discussed below, we limit access to universal service support to incumbent LECs that meet certain preconditions. As an initial matter, we find that limiting such support to incumbent LECs is consistent with their position in the marketplace and the resulting regulatory constraints on their pricing behavior. In a series of orders in the Competitive Carrier proceeding, the Commission distinguished two kinds of carriers—those with individual market power (dominant carriers) and those without market

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required by the reforms adopted in this order, that carrier may not seek to obtain supplemental universal service support based on the difference between the charges it sets and the maximum charges it is allowed to set.

[811] *See, e.g.*, Free Press Oct. 13, 2008 *Ex Parte* Letter at 6–7 (noting that, to the extent that there is universal service support to address any net loss in intercarrier compensation revenues, it "should be confined to rate-of-return carriers only."). *But see, e.g.*, GCI *Missoula Phantom Traffic* Comments at 66–67 (asserting that ACS of Anchorage has regularly earned returns in excess of an 11.25 percent rate of return on its regulated interstate switched access services).

[812] *See, e.g.*, Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter, Attach. at 2 (requesting, among other things, that the Commission ensure that "[s]upplemental interstate common line support (ICLS) (i.e., "the restructure mechanism") is automatically available for carriers that are currently under RoR regulation in the interstate jurisdiction without any other conditions applying").

[813] 47 U.S.C. § 254(i) (requiring that "[t]he Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable."); *see also* 47 U.S.C. §254(b)(1) (stating that "[q]uality services should be available at just, reasonable, and affordable rates").

[814] *See, e.g., CALLS Order*, 15 FCC Rcd at 12971, para. 24; *MAG Order*, 16 FCC Rcd at 19669–70, para. 132.

[815] Section 4(i) provides that the Commission may "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Prior to the enactment of section 254 (as part of the 1996 Act), sections 1 and 4(i) provided authority for the Commission's adoption of a universal service fund. *See Rural Telephone Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988). *See also New England Telephone and Telegraph Co. v. FCC*, 826 F.2d 1101, 1107 (D.C. Cir. 1987) (describing section 4(i) as a "wide-ranging source of authority"), *cert. denied*, 490 U.S. 1039 (1989).

power (non-dominant carriers).[816] The Commission found it appropriate to continue to subject dominant carriers to full regulation under Title II of the Communications Act.[817] Incumbent LECs are dominant carriers in their provision of switched access services and, as a result, are subject to rate regulation.[818] This rate regulation comes in two forms—regulation of intercarrier charges and regulation of end user charges. The Commission regulates interstate end-user charges of incumbent LECs, while the states generally regulate those carriers' intrastate end-user rates. Unlike incumbent LECs, competitive carriers (e.g., such as competitive LECs, CMRS providers, and non-dominant IXCs) lack market power and are considered non-dominant. As a result, their end-user charges are not subject to comparable rate regulation by the Commission and the states.[819]

315. Because incumbent LECs, as a result of their classification as dominant carriers, have had their end-user charges regulated (both in terms of rate levels and rate structures), they have less flexibility than other carriers to recover decreased intercarrier revenues through end-user charges. As a result, they are less likely to be able to recover reductions in intercarrier compensation revenues resulting from the actions we take today. Accordingly, we conclude that access to universal service support should be limited to incumbent LECs that meet the necessary preconditions. For this reason, we disagree with parties that advocate making funding available to all carriers, both incumbent and competitive[820] or to all

[816] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (*Competitive Carrier Second Report and Order*); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28292 (1983); Third Report and Order, 48 Fed. Reg. 46791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), *vacated, AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated, MCI Telecomms. Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (*Competitive Carrier Sixth Report and Order*), *aff'd, MCI v. AT&T*, 512 U.S. 218 (1994) (collectively, the *Competitive Carrier* proceeding); *see* 47 C.F.R. § 61.3(q), (y).

[817] *Competitive Carrier First Report and Order*, 85 FCC 2d at 10–11, para. 26.

[818] *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, WC Docket No. 02-112; CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16484, para. 90 (2007).

[819] For instance, the Commission has declined to regulate the SLCs of competitive LECs. *See Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Order, 17 FCC Rcd 10868, 10870 n.8 (2002) (subsequent history omitted); *see also CLEC Access Charge Order*, 16 FCC Rcd at 9955, para. 81 (stating that competitive LECs competing with CALLS incumbent LECs are free to build into their end-user rates a component equivalent to the incumbent LEC's SLC).

[820] *See, e.g.*, T-Mobile Oct. 3, 2008 *Ex Parte* Letter at 9 & n.14 (arguing that "any ICC replacement mechanism be fully portable to competitive carriers in order to fulfill the principles of competitive and technological neutrality."). Sprint argues that a fund that compensates only incumbent LECs (and not competitive LECs, wireless carriers, and IXCs) for lost access revenues is "blatantly anti-competitive." Letter from Anna M. Gomez, Vice President of Government Affairs, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45; WC Docket No. 04-36 at 4 (filed Oct. 1, 2008). Many CMRS carriers maintain that any replacement mechanism must be fully portable to competitive carriers in order to fulfill the principles of competitive and technological neutrality. *See, e.g.*, Leap *ICC FNPRM* Reply at 18; Allied National *ICC FNPRM* Comments at 10; CTIA *ICC FNPRM* Comments at 37; SouthernLINC *ICC FNPRM* Reply at 9; RCA *ICC FNPRM* Comments at 4; US Cellular (continued....)

carriers that currently receive access charge revenues.[821] As discussed above, competitive carrier end-user charges are not subject to rate regulation, and those carriers have the opportunity to recover lost access revenue through any legally permissible means.[822] We also reject an approach that would limit funding to rural rate-of-return carriers.[823] Incumbent LECs subject to price cap regulation also are subject to regulatory constraints on end-user charges, and we therefore decline to categorically deny universal service funding to particular types of incumbent LECs.[824]

316. *Supplemental IAS for price cap carriers.* Consistent with the policy approach discussed above, we further find it necessary to establish certain requirements that an incumbent LEC must satisfy to receive the new universal service subsidies. Before seeking universal service funding, interstate price cap incumbent LECs must first demonstrate that their end-user charges are at the maximum allowable rate levels. Thus, price cap incumbent LECs must show that they are charging the maximum interstate SLCs permitted under applicable law, and they must make the same showing with respect to any intrastate SLCs. In addition, price cap incumbent LECs must demonstrate that their retail local rates are at the maximum allowable amount based on applicable state regulation. Price cap incumbent LECs operating in

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ICC FNPRM Comments at 4; T-Mobile *ICC FNPRM* Comments at 26; Dobson and American *ICC FNPRM* Comments at 10.

[821] *See, e.g.*, ICF *ICC FNPRM* Comments at 32–33 (stating that any funding should be temporary and limited to those that lose access revenue because of intercarrier compensation reform); USTA *ICC FNPRM* Comments at 40 (arguing that funding should not compensate wireless carriers and that it should not be portable); CCAP *ICC FNPRM* Reply at 14 (stating that funding "should not be portable to competitive eligible telecommunications carriers."); Letter from Susanne A. Guyer, Senior Vice President of Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, Attach. at 7 (filed Oct. 12, 2008) (asserting that funding should compensate only LECs that have lost revenues because of intercarrier compensation reform); Letter from Curt Stamp, President, ITTA, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 01-92, 04-36, 96-45, 05-337, Attach. at 9 (filed Oct. 3, 2008) (arguing that the Commission should "limit duplicative networks" by prohibiting wireless carriers and other carriers that do not receive access compensation from benefiting from the fund); Letter from Alex J. Harris, Vice President—Regulatory, Frontier, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 16, 18 (filed May 11, 2005) (proposing that the funding be confined to incumbent LECs in rural study areas but available to all carriers that lost access revenues in non-rural study areas); *see also* Letter from Brad E. Mutschelknaus, Counsel to XO Communications, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket No. 06-122, Attach. at 4 (filed Oct. 3, 2008) (contending that revenue replacement funding should either be "competitively neutral" or limited to only rate-of-return carriers).

[822] Some competitive LECs claim that, in practice, they have little opportunity to recover their costs because the incumbent LEC, whose prices are regulated, effectively sets a ceiling on the prices they charge. *See, e.g.*, COMPTEL *Missoula Phantom Traffic* Comments at 7. Although we acknowledge that, in a homogeneous goods market with a single price, such an argument might be plausible, we do not find such assumptions apply in modern telecommunications markets. In particular, with modern telecommunications technology, carriers are offering an expanding number of new services and marketing them through a variety of bundled service offerings. As a result, telecommunications services are becoming much more of a differentiated product, and competitors have greater opportunity to offer niche services. In light of these developments, we find unpersuasive arguments that competitors are effectively price regulated and thus do not have an opportunity to recover lost access revenues.

[823] *See, e.g.*, NCTA *ICC FNPRM* Comments at 11 (arguing that funding should be limited to "non-Tier 1 rural carrier[s]"); NTCA *ICC FNPRM* Comments at 56 (asserting that funding "should be targeted at rural ILECs exclusively"); Comments of the Rural Alliance, CC Docket No. 01-92 at 4 (filed Jun. 27, 2008) (stating that the fund should only compensate rural rate-of-return carriers that lose access revenues).

[824] For these same reasons, should a carrier agree to (or tariff) intercarrier charges below those that would be required by the reforms adopted in this order, that carrier may not seek to obtain supplemental universal service support based on the difference between the charges it sets and the maximum charges it is allowed to set.

states where retail rates are deregulated are not entitled to the new universal service funding adopted here. In this case, these price cap incumbent LECs will be similarly situated to competitive carriers, because without regulation, they have the opportunity to recover lost access revenues due to intercarrier compensation reform through increased end-user charges.

317. In addition, a price cap incumbent LEC may qualify for universal service funding if it can demonstrate that, as a result of reduced and reformed intercarrier charges, and after accounting for increased end-user charges, it is still unable to earn a "normal profit." In the *Local Competition First Report and Order*, the Commission discussed the concept of normal profit and defined it as the "total revenue required to cover all the costs of a firm, including its opportunity costs."[825]

318. As described above, many companies—in particular, price cap carriers—consistently are paying dividends and are using the same supported network to provide both regulated services and non-regulated services.[826] We do not find it appropriate to require all universal service contributors to pay into the fund to provide for "'high overhead, sumptuous earnings, [and] rich dividends'" on the part of these carriers.[827] Indeed, as discussed above,[828] "[i]ntercarrier compensation, SLCs and the USF are but three of the numerous spigots from which dollars flow to fill up the telephone companies' revenue buckets"[829] in addition to other nonregulated services that use "their common local loop platform."[830] . Therefore, in determining whether this criterion is met, the Commission will evaluate the total costs and total revenues of the company as a whole, including those from both regulated and non-regulated sources.[831] While this is a more stringent showing than that required of rate-of-return carriers, we find such differences warranted by the different rate regulation frameworks. In light of our reforms, we find it appropriate, upon request, to allow price cap carriers to make a one-way election of rate-of-return regulation.[832]

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[825] *Local Competition First Report and Order*, 11 FCC Rcd at 15854, para. 699.

[826] *See supra* para. 312.

[827] *Universal Service Telephone Subsidies* at 33.

[828] As discussed below, Lifeline customers are exempt from contribution assessments. *See infra* para. 137.

[829] NASUCA Sept. 30, 2008 *Ex Parte* Letter at 6.

[830] NASUCA July 7, 2008 *Ex Parte* Letter at 6.

[831] The non-regulated costs and revenues to be included in this calculation are those associated with non-regulated activities involving the common or joint use of assets or resources in the provision of both regulated and non-regulated products and services.

[832] Pursuant to section 61.41(d) of the Commission's rules, once a carrier is subject to price cap regulation, it may not "withdraw from such regulation." 47 C.F.R. § 61.41(d); *see also* 47 C.F.R. § 61.41(b), (c) (requiring conversion from rate-of-return to price cap regulation under certain circumstances). Under section 1.3 of the Commission's rules, however, "any provision of the Commission's rules may be waived by the Commission . . . if good cause therefore is shown." 47 C.F.R. § 1.3. As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and that such a deviation will serve the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969)). In other circumstances in the past, the Commission has found good cause to waiver section 61.41(d) and other related provisions of the Commission's rules to enable operations subject to price cap regulation to convert to rate-of-return regulation. *See, e.g., ALLTEL Corp. Petition for Waiver of Section 61.41 of the Commission's Rules and Application for Transfer of Control*, CCB/CPD No. 99-1, Memorandum Opinion and Order, 14 FCC Rcd. 14191 (1999); *CenturyTel of Northwest Arkansas, LLC et al., Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) of the Commission's Rules*, CC Docket No. 96-45, Memorandum

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319. We recognize that the conditions by which we would make universal service funding available may not ensure that all carriers recover all reduced intercarrier compensation revenues that result from the reforms we adopt here. We reject the assertion by some carriers that any revenue replacement mechanism adopted by the Commission in the context of intercarrier compensation reform must ensure absolute revenue neutrality.[833] We agree with commenters who maintain that the Commission has no legal obligation to ensure that carriers recover every dollar in access revenues lost as a result of reform, absent a showing of a taking.[834] We conclude that certain increased end-user charges and narrowly targeted supplemental IAS universal service support will provide a reasonable opportunity to recover revenues lost as a result of our intercarrier compensation reform, and to earn a reasonable profit. Whether a particular price cap incumbent LEC is entitled to any revenue recovery, however, will be considered on a case-by-case basis based on the criteria outlined here.

320. *Supplemental ICLS for rate-of-return carriers.* As discussed above, we recognize that interstate rate-of-return carriers present a special situation, because under our rules they must be provided an opportunity to earn their regulated rate of return. In this regard, we adopt the proposal of OPASTCO/WTA, which we find strikes the proper balance regarding supplemental ICLS support. Thus, the only precondition to an incumbent LEC receiving supplemental ICLS support is that the incumbent LEC is under rate-of-return regulation in the interstate jurisdiction.[835]

321. In addition, we adopt the OPASTCO/WTA proposal that supplemental ICLS consist of two components. The first component compensates rural rate-of-return incumbent LECs for all of the revenues lost as a result of the mandated reductions in intercarrier compensation rates that are not otherwise recoverable through increases in SLCs.[836] The second component is available only to those rural rate-of-return incumbent LECs that have committed to the five-year broadband build-out requirement.[837] This component is intended to ensure that those rural rate-of-return incumbent LECs continue to have an opportunity to earn their authorized interstate rate of return, subject to a cap. This component will provide compensation for unrecoverable revenue losses attributable to losses in access lines and interstate and intrastate minutes of use, using 2008 as a base year. The second component remains in effect for the first five years of the transition and is capped at $100 million in year one, $200 million in year two, $300 million in year three, $400 million in year four, and $500 million in year five. Prior to year five, the Commission shall conduct a proceeding to determine if modifications are required.

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Opinion and Order, 15 FCC Rcd 25437 (Acc. Pol. Div. 2000); *ALLTEL Service Corporation, Petition for Waiver of Section 61.41 of the Commission's Rules*, Order, 8 FCC Rcd 7054 (Com. Car. Bur. 1993) (granting waiver of sections 61.41(c), (d) of the Commission's rules). Likewise, as noted above, we find it appropriate, upon request, to allow price cap carriers to make a one-way election of rate-of-return regulation.

[833] *See supra* para. 313.

[834] *See, e.g.*, Ad Hoc *ICC FNPRM* Reply at 10–11 (arguing that the Commission has no legal obligation to allow revenue neutrality); CTIA *ICC FNPRM* Comments at 46; Nextel *ICC FNPRM* Comments at 20; T-Mobile *ICC FNPRM* Comments at 13 (intercarrier compensation was not intended to guarantee an ILEC revenue stream or preserve low local rates for a given industry segment, doing so would perpetuate inefficiencies); NASUCA *ICC FNPRM* Reply at 34–38 (arguing that the Commission is not required to provide for revenue neutrality and that revenue neutrality deviates from the Commission's past policy).

[835] Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter, Attach. at 2.

[836] Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter, Attach. at 2. This support will remain available at least through the ten year transition period adopted in this order.

[837] *See supra* Part II.B.3 (describing broadband build-out requirement). *See also* Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter, Attach. at 2.

Overall, we find that this approach to supplemental ICLS properly addresses the needs of rural rate-of-return carriers, and their right to an opportunity to recover their authorized rate of return.

D. Measures to Ensure Proper Billing

1. Introduction

322. As explained in Part V.A., the current disparity of rates under existing intercarrier compensation mechanisms presents service providers[838] with the opportunity and the incentive to misidentify or otherwise conceal the source of traffic to avoid or reduce payments to other service providers. In this Part, we amend our rules to help ensure the ability of service providers to receive the appropriate compensation for traffic terminated on their networks.[839] More importantly, we believe that the comprehensive compensation reforms we adopt today should significantly reduce service providers' incentives to mislabel traffic or otherwise to try to avoid their financial obligations.[840] Nonetheless, we balance a desire to facilitate resolution of billing disputes with a reluctance to regulate in areas where industry resolution has, in many cases, proven effective. We find that the requirements we adopt here will facilitate the transfer of information to terminating service providers, and improve their ability to identify providers from whom they receive traffic, without imposing burdensome costs. In the event that traffic does not contain the information required by our rules, or the provider delivering the traffic does not otherwise provide the required call information, for example by providing an industry-standard billing record, to the provider receiving it, we allow the terminating service provider to charge its highest terminating rate to the service provider delivering the traffic. To the extent that a provider acting simply as an intermediate provider (such as a transit provider) becomes subject to a charge under this provision, that intermediate provider can charge the rate it was charged to the provider that delivered the improperly labeled traffic to it. This will ensure that providers are paid for terminating traffic in those instances, and gives financial incentives for upstream providers in the call path to ensure that the traffic includes proper information in the first instance.

2. Background

323. Problems related to traffic arriving for termination with insufficient identification information arise from the technical systems and processes used to create, transfer, and gather intercarrier compensation billing information. To bill for termination of traffic, a terminating service provider must be able to identify the appropriate upstream service provider, and the location of the caller (or a proxy for the caller's location) in order to determine jurisdiction, which is necessary to determine the appropriate charge under existing intercarrier compensation rules.[841] Calls frequently traverse several networks to

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[838] We use the term "service providers" in this section to refer both to carriers that provide telecommunications services and to providers of services that originate calls on IP networks and terminate them on circuit switched networks.

[839] Parties frequently use the term "phantom traffic" in describing this problem. We will not use that term in the regulations we adopt here because there is no consensus as to how it should be defined, nor is such a definition necessary for us to address the underlying issues faced by service providers in billing for traffic they receive.

[840] Similarly, we believe that the transition to a uniform intercarrier compensation rate based on the additional costs methodology described above also will address the access stimulation concerns that have recently been raised. *See supra* para. 185. In the unlikely event that service providers persist in these activities, however, we note that the Commission has an open proceeding in which appropriate responses to such actions may be considered. *See generally Access Stimulation NPRM*, 22 FCC Rcd 17989.

[841] This order initiates a process of unifying terminating intercarrier compensation rates, thereby eliminating the rate distinctions between local and long distance calls. Although knowing the origination point of a call remains

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connect the calling and called parties. When the originating and terminating networks are not directly connected, as is the case when calls are delivered via tandem transit service, complications with transmitting and receiving billing information related to a call can arise.[842] Terminating service providers that are not directly connected to originating service providers receive information about calls sent to their networks for termination from two sources: Signaling System 7 (SS7) signaling streams[843] and industry standard billing records,[844] which typically are provided by the intermediate service provider connecting the terminating provider to the originating provider.[845]

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important, especially during the period of transition to a unified terminating rate, the origination point is less significant for the purpose of determining intercarrier compensation due.

[842] *See, e.g.*, Letter from Patrick J. Donovan, Counsel for PacWest Telecomm, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 3–4 (filed Oct. 14, 2005).

[843] SS7 is an out-of-band signaling system that is separate from, but runs parallel to, the public switched telephone network (PSTN) and is used to set up call paths between calling and called parties. The following steps typically occur when SS7 sets up a call path for a wireline LEC to wireline LEC call originating and terminating on the PSTN. When a wireline LEC customer dials a call destined for an end user served by a different wireline LEC, the calling party's LEC determines, based on the dialed digits, that it cannot terminate the call. The SS7 call signaling system then begins the process of identifying a path that the call will take to reach the called party's network. SS7 identifies each service provider in the call path and provides each with the called party's telephone number and other information related to the call, including message type and nature of connection indicators, forward call indicators, calling party's category, and user service information if that information was correctly populated and not altered during the signaling process. *See* Letter from L. Charles Keller, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Sept. 13, 2005) (Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter). SS7 was designed to facilitate call routing and was not designed to provide billing information to terminating carriers. *See* Verizon, *Verizon's Proposed Regulatory Action to Address Phantom Traffic* at 5–7 (Verizon Phantom Traffic White Paper), attached to Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Dec. 20, 2005). Technical content and format of SS7 signaling is governed by industry standards rather than by Commission rules, although Commission rules require carriers using SS7 to transmit calling party number (CPN) to subsequent carriers on interstate calls where it is technically feasibly to do so. 47 C.F.R. § 64.1601.

[844] Industry standard billing records are the other common source of information that terminating service providers not directly connected to originating service providers receive about calls sent to their networks for termination. Billing records are typically created by a tandem switch that receives a call for delivery to a terminating network via tandem transit service. Tandem switches create billing records by combining CPN or Charge Number (CN) information from the SS7 signaling stream with information identifying the originating service provider to provide terminating service providers with information necessary for billing. *See* Verizon Phantom Traffic White Paper at 5–7. The tandem switch creating the billing record identifies service providers from whom it receives traffic using the trunk group number (TGN) of the trunk on which a call arrives. *See* Verizon Phantom Traffic White Paper at 4; *see also* Letter from Glenn T. Reynolds, Vice President—Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 01-92, Attach. at 5 (filed Jan. 12, 2006) (BellSouth Jan. 12, 2006 *Ex Parte* Letter). The tandem switch translates the TGN into one of two codes identifying the originating the service provider: Carrier Identification Code (CIC) if the originating service provider is an IXC, or Operating Company Number (OCN) for non-IXC calls. The appropriate CIC or OCN is then added, by the tandem switch, if it is equipped to record such information, to the billing record for the call, which is then forwarded to the terminating service provider. *See* Verizon Phantom Traffic White Paper at 5–7; *see also* Verizon *ICC FNPRM* Reply at 16. Service providers delivering billing records typically use the Exchange Message Interface (EMI) format created and maintained by the Alliance for Telecommunications Industry Solutions Ordering and Billing Forum (ATIS/OBF), an industry standards setting group. *See* ATIS Exchange Message Interface 22 Revision 2, ATIS Document number 0406000-02200 (July 2005).

[845] *See* Verizon Phantom Traffic White Paper at 5–7.

324. One significant source of billing problems is traffic routed through an intermediate provider that does not include calling party number (CPN) or other information identifying the calling party.[846] In addition, commenters describe several examples of other situations where traffic arrives for termination with insufficient information to identify the originating service provider.[847] Another source of disputes occurs when terminating service providers find differences when attempting to reconcile SS7 data they record and billing records they receive.[848] Such a reconciliation process will likely be inexact, because SS7 streams were not designed to provide billing information.[849] Similarly, at least one commenter asserts that "problems arise" when terminating service providers "second guess tandem traffic reports and generate their own billing statements for carriers with whom they are indirectly interconnected."[850] In addition to unidentifiable traffic caused by unintended network routing circumstances, as described above, several commenters allege that they receive traffic in which the billing information intentionally has been altered or stripped before the call reaches the terminating service provider.[851] Indeed, numerous parties have described experiencing problems of the sort described above.[852] Several proposals suggesting how the Commission should address this problem have been filed in the record in this proceeding in recent years.[853] Recently, the United States Telecom Association

[846] The Commission recognized that the ability of service providers to identify the provider to bill appropriate intercarrier compensation payments depends, in part, on billing records generated by intermediate service providers. Thus, the Commission sought comment on whether current rules and industry standardscreate billing records that are sufficiently detailed to permit determinations of the appropriate compensation due. *See Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4743, para. 133.

[847] For example, when a call bound for a number that has been ported to a different service provider is delivered without the responsible service provider performing a local number portability (LNP) query, the call may be delivered to the wrong end office and then may be re-routed to a tandem switch for delivery to the correct end office. *See* Verizon Phantom Traffic White Paper at 18–19. According to Verizon, neither the end office that re-routes the call nor the tandem switch receiving the rerouted call are able to route the call over an access trunk; the call must be sent over a local interconnection trunk. *See id.* In this scenario, the terminating carrier may have difficulty billing the appropriate charges to the IXC that sent the call.

[848] *See* Letter from Stephen T. Perkins, General Counsel, Cavalier Telephone, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 1 (filed Sept. 29, 2005). *See also* Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 10 (filed Oct. 21, 2005).

[849] *See* Letter from Donna Epps, Vice President—Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 5 (filed Aug. 1, 2005); Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter at 2.

[850] Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter at 3.

[851] *See, e.g.*, Balhoff and Rowe *ICC FNPRM* Reply at 10; California Small LECs *ICC FNPRM* Comments at 9; ITCI *ICC FNPRM* Reply at 7; Montana Independent Telecommunications Systems (MITS) et al. *ICC FNPRM* Comments at 14, 20; MITS et al. *ICC FNPRM* Reply at 23–24, 33; NECA *ICC FNPRM* Comments at 16; Rural Alliance *ICC FNPRM* Comments at 108; SureWest *ICC FNPRM* Comments at 7; TDS *ICC FNPRM* Comments at 10; BellSouth Jan. 11, 2006 *Ex Parte* Letter at 6.

[852] *See, e.g.*, Letter from Glenn T. Reynolds, Vice President, Policy, USTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008) (USTA Feb. 12, 2008 Proposal). *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, NECA Petition for Interim Order (filed Jan. 22, 2008) (NECA Petition).

[853] *See, e.g.*, NARUC Task Force July 24, 2006 *Ex Parte* Letter, Attach. 2; Letter from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Nov. 6, 2006) (Missoula Plan Supporters Nov. 6 *Ex Parte* Letter or Missoula Plan Call Signaling Proposal); Letter from Donna Epps, Vice President, Federal

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(USTelecom) filed a proposal that appears to enjoy the broadest industry support of any filed to date.[854] For reasons detailed below, we agree that traffic that lacks sufficient information to enable proper billing of intercarrier compensation charges is a problem. Consequently, we take steps to address the problem and help ensure proper functioning of the intercarrier compensation system.[855]

3. Discussion

325. We amend our rules as described below to facilitate the transfer of necessary information to terminating service providers, particularly in cases where traffic is delivered through indirect interconnection arrangements. These new requirements will assist in determining the appropriate service provider to bill for any call. We note that these new requirements generally reflect standard industry practice, as recommended by several commenters.[856] We also amend our rules to establish payment obligations for service providers that send traffic that lacks the information required by our amended call signaling rules to intermediate or terminating service providers or that does not otherwise provide the required call information to the recipient. Incorporating these practices into our rules will facilitate resolution of billing disputes, will provide incentives to help prevent manipulation or deletion of information from signaling streams, and will provide incentives for service providers to ensure that traffic traversing their networks is properly labeled and identifiable, in compliance with the rules we adopt in this order.[857]

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Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Apr. 4, 2006); Letter from Jeffrey S. Lanning, Associate General Counsel, USTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Mar. 30, 2006) (MCC/USTA Proposal); Letter from Karen Brinkmann, Attorney for the MidSize Carrier Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Mar. 31, 2006) (supporting MCC/USTA Proposal).

[854] *See* USTA Feb. 12, 2008 Proposal; *see also* Letter from Melissa E. Newman, Vice President—Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Sept. 24, 2008); Letter from Curt Stamp, President, ITTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2, filed Sept. 19, 2008); Letter from Eric Einhorn, Vice president, Federal Government Affairs, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 et al. (filed Sept. 24, 2008); Comments of Windstream, CC Docket Nos. 99-68, 01-92, 96-45, WC Docket Nos. 08-152, 07-135, 04-36, 06-122, 05-337 at 16 (filed Aug. 21, 2008); Letter from Gregory J. Vogt, Counsel for CenturyTel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Aug. 6, 2008); Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed July 17, 2008).

[855] The rules we adopt herein reflect the Commission's determinations regarding how to address call signaling problems as they relate to unidentified and unbillable traffic. Therefore, we disagree with commenters requesting that we adopt alternative proposals such as the NECA petition or the Missoula Plan Call Signaling Proposal. *See, e.g.*, Letter from Robert F. Aldrich, Counsel to the American Public Communications Council, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92 (filed Oct. 21, 2008).

[856] *See, e.g.*, Letter from Paul Garnett, Director, Regulatory Policy, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 3 (filed Jan. 3, 2006); Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Mar. 30, 2006).

[857] The rules we amend in this order were adopted in a 1995 order addressing Caller ID services. *See Rules and Policies Regarding Calling Number Identification Service – Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11728, para. 79 (1995) (*Caller ID Order*). In the *Caller ID Order*, the Commission found, inter alia, that the CPN based services to which the rules adopted apply are "jurisdictionally mixed" and the Commission therefore preempted an inconsistent state statute. *Id.* at 11722–23, paras. 62, 85. For these same reasons, to the extent the amendments we make to our call signaling rules in this order conflict with any current or future state statutes, those statutes are preempted. *See id.* at 11728–34, paras. 78–95.

a. Signaling Information

326. We agree with the USTelecom Feb. 12, 2008 Proposal concerning the importance of call signaling obligations.[858] CPN is a critical component of call signaling information. When CPN is populated in the SS7 stream by an originating service provider and passed, unaltered, along a call path to a terminating service provider, the terminating provider can use the CPN information to help determine the applicable intercarrier compensation.

327. We agree with commenters[859] that assert that the best way to ensure that complete and accurate information about a call gets to the terminating service provider for that call is to require providers to populate, and to prohibit them from stripping or altering, CPN information in the SS7 call signaling stream.[860] In an environment where numerous service providers may be involved in the completion of a call, this SS7 signaling information must be passed, unaltered, from one to the next in a call path until it reaches the terminating service provider. We therefore modify our rules to prohibit stripping or altering information in the SS7 call signaling stream. We do not, however, make any changes to the designation of particular fields as mandatory or optional, nor do we otherwise intend to change industry standards that govern the population of the SS7 signaling stream.[861]

328. The record also makes clear that we must expand the scope of our existing rule regarding passing CPN,[862] which currently applies only to service providers using SS7 and only to interstate traffic. We therefore extend these requirements to all traffic originating or terminating on the PSTN, including jurisdictionally intrastate traffic.[863] We also amend our rules to require service providers using MF signaling to pass CPN information, or the charge number (CN) if it differs from the CPN, in the Multi Frequency Automatic Number Identification (MF ANI) field.[864] This rule change will ensure that

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[858] *See* USTA Feb. 12, 2008 Proposal.

[859] *See, e.g.*, USTA Feb. 12, 2008 Proposal; NECA Petition.

[860] Because we agree that requiring population of CPN is the best way to ensure that complete and accurate information about a call gets to the terminating service provider for that call, we disagree with proposals to exclude certain types of traffic from this requirement. *See, e.g.*, Letter from Jim Kohlenberger, Executive Director, The VON Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket 04-36 at 6 (filed Oct. 28, 2008). We note that parties are free to contract with third parties to ensure that these requirements are met. *Cf., e.g.*, *LNP Order*, 22 FCC Rcd 19531 (holding that, where interconnected VoIP providers rely on other carriers for access to numbers, both parties must take the steps needed to comply with the number porting obligations established in that order); *Interconnected VoIP 911 Order*, 20 FCC Rcd 10245 (finding that interconnected VoIP providers might elect to comply with their 911 obligations in party by relying on services provided by third parties).

[861] We take a cautious approach in considering any new or revised signaling requirements. SS7 was designed to facilitate call setup and routing, and action we take here is not intended to interfere with the ability of calls to reach their intended recipient. As Verizon Wireless explains, certain SS7 fields are considered mandatory, while others (including CPN, CN, and JIP) are considered optional. *See* Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter at 2. The distinction is significant, because a call will not be completed if a mandatory field has not been populated. *See* Letter from Thomas Goode, Associate General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. (filed Feb. 10, 2006). Although CPN is considered optional in the industry standard, our rules, before and after amendment pursuant to this order, require service providers to pass CPN in specified circumstances. *See* 47 C.F.R § 64.1601.

[862] *See* 47 C.F.R. § 64.1601.

[863] *See supra* note 862.

[864] *See* Missoula Plan at 56; Letter from Brad E. Mutschelknaus, Counsel for XO, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 11–12 (filed Feb. 14, 2006).

information identifying the calling party is included in call signaling information for all calls.

329. In addition, we agree with commenters who suggest that our call signaling rules should address CN as well as CPN.[865] Verizon states that, in accordance with industry practice, the CN parameter is not populated in the SS7 stream when it is the same as CPN, but that when the CN parameter is populated, CN is included in billing records in place of CPN.[866] We therefore clarify that populating a CN field with information other than the charge number to be billed for the call, consistent with industry standards, falls within this prohibition. This clarification is not intended to disrupt standard industry practice with regard to using CN in the signaling stream and in billing records. But, we also clarify that the prohibition on altering or stripping signaling information applies to CN as well as CPN. The prohibition on altering or stripping SS7, MF ANI, or CN signaling information obligates intermediate service providers to pass, unaltered, whatever signaling information they receive.

330. The call signaling rules we adopt in this order will help ensure that signaling information is passed completely and accurately to terminating service providers. These rules are not intended to affect existing agreements between service providers regarding how to "jurisdictionalize" traffic when traditional call identifying parameters are missing, as long as such agreements are not inconsistent with the rules adopted in this order.

331. We find that some very limited exceptions to these new rules are needed. We agree with Verizon, for example, that a limited exception is needed in situations where industry standards permit, or even require, some alteration in signaling information by an intermediate service provider.[867] As noted above, we do not intend to change standard industry practice with respect to the content of the signaling stream. Service providers that follow standard industry practice in this way will not be considered in violation of the prohibition on altering signaling information. We also note that the exemptions from our existing call signaling requirements described in section 64.1601(d) remain necessary for their limited purposes, and will continue to apply.[868]

b. Financial Responsibilities

332. We also impose financial responsibilities that will work in step with our amended signaling rules to give service providers financial incentives to ensure that they, and the providers whose traffic they carry, comply with the signaling obligations. We find that these requirements will significantly reduce any existing incentives to avoid compliance by substantially eliminating any financial benefits of noncompliance.

333. We agree with commenters who propose that we permit service providers that terminate traffic lacking sufficient information to bill the service provider that delivered the traffic to the terminating provider.[869] In particular, we require that a service provider, e.g., transit provider, delivering

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[865] *See, e.g.*, NECA Petition; Letter from Cheryl A. Tritt, Counsel for T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 6 (filed Feb. 2, 2006); Verizon Phantom Traffic White Paper at 8–10.

[866] *See* Verizon Phantom Traffic White Paper at 8.

[867] *See* Verizon Phantom Traffic White Paper at 9–10. For example, Verizon states that on a call to a party that has forwarded its number, the called party's service provider will replace the caller's CN with the called party's CN before sending the call to the forward location.

[868] 47 C.F.R. § 64.1601(d).

[869] *See, e.g.*, EPG Proposal at 2 ("All messages that are not properly labeled would be billed at the highest prevailing intercarrier compensation rate to the interconnecting carrier delivering the traffic."); ARIC Plan at 55; CenturyTel *ICC FNRPM* Comments at 6; Hickory *ICC FNPRM* Comments at 2 ; JSI *ICC FNPRM* Comments at 4–6; Colorado Telecom Ass'n et al. *ICC FNPRM* Reply at 13, TDS Telecom *ICC FNPRM* Reply 14, JSI *Missoula Phantom Traffic*

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traffic that lacks any of the signaling information required by our rules as amended herein, or that does not otherwise provide the required call information, for example by providing an industry standard billing record, to the recipient, must pay the terminating service provider's highest termination rate in effect at the time the traffic is delivered to the terminating service provider.[870] By making intermediate service providers financially responsible in these circumstances, we ensure that service providers are compensated for terminating traffic.

334. We also permit those intermediate service providers, in turn, to pass along the termination charges to the provider that delivered the applicable traffic to them, in addition to any otherwise-applicable charge for their services. We agree with commenters that the providers delivering traffic are in a better position than the terminating service provider "to know which carriers are routing improperly or incompletely identified traffic"[871] and to recover the termination charges from them. Moreover, by permitting intermediate service providers to pass along those charges on top of their otherwise-applicable rates, we create disincentives for service providers who might otherwise originate, or act as a "pass through" for mislabeled or unidentifiable traffic.

335. We are unpersuaded by the objections to imposing such financial obligations on intermediate service providers.[872] For example, one objection is based on the assumption that transit providers will be the only intermediate service providers subject to such liability, and will be unable to pass along those charges.[873] The financial responsibility under this order for traffic that lacks sufficient billing information is not limited to transit service providers, however. Rather, any service provider that passes traffic lacking sufficient billing information becomes responsible for intercarrier payments to the receiving provider. Additionally, we expressly permit service providers subject to this charge to pass it along to the service provider that delivered the applicable traffic to them.

336. Another commenter objects to any proposal that "gives . . . [ILECs] the authority to impose new rates based on their own interpretation of the sufficiency of data received or interpretation of jurisdictional parameters."[874] Under our amended rules, service providers will not be able to impose rates

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Comments at 4–6; RICA *Missoula Phantom Traffic* Comments at 2–3; TexalTel *Missoula Phantom Traffic* Comments at 7–8; Cavalier *Missoula Phantom Traffic* Comments at 2–3; PAPUC *Missoula Phantom Traffic* Reply at 8.

[870] We agree with commenters who note that intermediate service providers that provide, to subsequent service providers in a call path, information sufficient to identify the provider that delivered the traffic to the intermediate provider should not be responsible for terminating intercarrier payments for that traffic. *See, e.g.*, Letter from Susanne A. Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to Chairman Kevin Martin et al., FCC, CC Docket Nos. 96-45, 01-92 at 2 (filed Oct. 28, 2008); Letter from Mark D. Schneider, Counsel, Neutral Tandem, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Oct. 28, 2008); Letter from Tamar E. Finn, Counsel, Zayo Group, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68 at 2 (filed Oct. 28, 2008).

[871] ARIC Plan at 55.

[872] *See, e.g.*, Letter from Donna Epps, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed July 7, 2007); Letter from Charles W. McKee, Director—Government Affairs, Federal Regulatory, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Apr. 20, 2007) (Sprint Nextel April 20, 2007 *Ex Parte* Letter); Letter from Charon Phillips, Director—Government Affairs, Federal Regulatory, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Mar. 13, 2007).

[873] *See, e.g.*, Verizon *Missoula Phantom Traffic* Reply at 5–6.

[874] *See* Sprint Nextel April 20, 2007 *Ex Parte* Letter at 2.

based on their own interpretation of the sufficiency of data received. Instead, our amended rules set the *standard for what information must be included and passed.*

337. We also disagree with commenters who suggest that imposing liability on intermediate service providers implies that the problem is the result of transiting service providers altering call detail information.[875] The financial obligations we impose on intermediate service providers are triggered by passing traffic that does not comply with the call signaling rules, regardless of whether the traffic was originated or altered by the passing service provider. Accordingly, any service provider, not just a provider who stripped or altered traffic signaling, who is not taking steps to ensure that traffic carried on their network is properly labeled and identifiable could be held responsible for payment by the provider to whom it delivered traffic.

338. In addition to call signaling, the USTelecom Feb. 12, 2008 proposal seeks Commission action related to routing traffic, local number portability queries, and providing incumbent LECs with certain rights with regard to the section 251 and 252 negotiation and arbitration processes.[876] Although a broad cross section of the industry supports the USTelecom Feb. 12, 2008 proposal in its entirety, several commenters objected to the section 251 and 252 negotiation and arbitration provisions.[877] In light of the lack of consensus on some of these issues and the changes to the intercarrier compensation system adopted in this order we are not persuaded that the other specific actions sought in the USTelecom Feb 12, 2008 proposal are necessary at this time.[878]

VI. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Universal Service

339. In the above order, we adopted a five year plan for phasing out current competitive ETC support. Here we seek comment on an appropriate universal service mechanism (or mechanisms) focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas.

340. With respect to contribution methodology, as we explain above, an assessment methodology based solely on telephone numbers would not require certain business services to equitably contribute to the universal service fund.[879] We, therefore, determine that universal service contributions for business services will be based on connections as opposed to numbers. We seek comment on how best to implement a connection-based mechanism for business services, and whether that mechanism

[875] *See* Missoula Plan Supporters *Missoula Phantom Traffic* Reply at 11–12.

[876] *See* USTA Feb. 12, 2008 Proposal.

[877] *See, e.g.*, Letter from Brad Mutschelknaus, Counsel to Broadview Networks et al. to Kevin J. Martin et al., FCC, CC Docket No. 01-92 (filed Oct. 22, 2008); Letter from Henry T. Kelly, Counsel to Peerless Networks to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92 et al. (filed Sept. 16, 2008); Letter from Charles W. McKee, Director—Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Apr. 16, 2008); Letter from Thomas Cohen, Edward A. Yorkgitis, Jr., Counsel for NuVox Communications et al., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Mar. 11, 2008); Letter from Daniel L. Brenner, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Feb. 29, 2008); Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Feb. 25, 2008).

[878] The USTA Feb 12, 2008 Proposal also sought certain enforcement commitments related to our call signaling rules. In this regard, USTA's proposal did not seek anything beyond the ordinary course of business. As with any of our rules, the Commission is committed to resolving complaints expeditiously and will not hesitate to initiate enforcement proceedings against rule violators.

[879] *See supra* para. 130.

should be based solely on connections or on a combination of Assessable Numbers and connections.

341. We also seek comment on expanding our NRUF data collection to all providers who are required to contribute to the universal service fund based on Assessable Numbers. At present, our NRUF reporting rules require "reporting carriers" to file reports. A "reporting carrier" is defined as "a telecommunications carrier that receives numbering resources from the NANPA, a Pooling Administrator or another telecommunications carrier."[880] "Reporting carriers" file reports regarding six categories of numbers, the descriptions of some of which refer to "telecommunications carriers" or "telecommunications services."[881] We seek comment on whether we should amend our rules to require all providers who assign numbers or otherwise make numbers available to end users to file NRUF reports. Would such an expansion assist the Commission and the fund administrator with monitoring and enforcing universal service contribution requirements? What modifications would the Commission need to make to its rules to effectuate this kind of policy change?

B. Intercarrier Compensation Further Notice

342. In this Further Notice of Proposed Rulemaking (Further Notice) we seek comment on certain additional issues not resolved in our accompanying order.

343. *Originating Access.* In this order, we conclude that retention of originating access charges would be inconsistent with our new regulatory approach to intercarrier compensation.[882] Accordingly, we find that originating charges for all telecommunications traffic subject to our comprehensive intercarrier compensation framework must be eliminated by the conclusion of the transition to the new regime. We seek comment on issues relating to the transition for the elimination of originating access.

344. *Transit Traffic.* Transiting occurs when two carriers that are not directly interconnected exchange traffic by routing the traffic through an intermediary carrier's network.[883] We request comment on whether the reforms we adopt today necessitate the adoption of any rules or guidelines governing transit service.

345. *Universal Service Rules Applicable to Rate-of-Return Carriers.* In this order, we conclude that under certain circumstances, rate-of-return carriers will be able to receive universal service support to recover net reduced revenues from intercarrier compensation as a result of reforms adopted in this order that they do not otherwise recover through SLC increases or other revenue increases. We seek comment on what rule changes are necessary to allow rate-of-return carriers to receive universal service support in this manner.

346. *Parts 51, 54, 61, and 69.* Part 51 of the Commission's rules contain requirements applicable to interconnection, including reciprocal compensation.[884] Part 54 of the Commission's rules

[880] 47 C.F.R. § 52.12(f)(2).

[881] *E.g.*, 47 C.F.R. § 52.12(e)(i) ("*Administrative numbers* are numbers used by telecommunications carriers . . . ."); *id.* § 52.12(e)(v) ("*Intermediate numbers* are numbers that are made available . . . for the purpose of providing telecommunications service . . . .").

[882] *See supra* para. 229.

[883] *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4737–38, para. 120. Typically, the intermediary carrier is an incumbent LEC and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities. *See id.* We note that carriers have various agreements governing the provision of transit traffic. *See id.*

[884] *See* 47 C.F.R. Part 51.

describe universal service programs and administration.[885] Part 61 of the Commission's rules prescribes the framework for the initial establishment of and subsequent revisions to tariff publications.[886] Part 69 of the rules governs the Commission's access charge regulations for interstate or foreign access services.[887] We solicit comment on the need to revise the rules set forth in Parts 51, 54, 61 and/or 69, or any other rules, as a result of the reforms we adopt today.

VII. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

347. The rulemaking this Further Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[888] Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[889] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[890]

B. Comment Filing Procedures

348. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[891] interested parties may file comments and reply comments regarding the Further Notice on or before the dates indicated on the first page of this document. **All filings related to the intercarrier compensation Further Notice of Proposed Rulemaking should refer to CC Docket No. 01-92. All filings related to the universal service contributions Further Notice of Proposed Rulemaking should refer to WC Docket No. 06-122.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's e-Rulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

349. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal e-Rulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

350. ECFS filers must transmit one electronic copy of the comments for CC Docket Nos. 01-92, 99-200, or WC Docket No. 06-122, respectively. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

351. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving

[885] *See* 47 C.F.R. Part 54.

[886] *See* 47 C.F.R. Part 61.

[887] *See* 47 C.F.R. Part 69.

[888] 47 C.F.R. § 1.200 *et seq.*

[889] *See* 47 C.F.R. § 1.1206(b)(2).

[890] 47 C.F.R. § 1.1206(b).

[891] 47 C.F.R. §§ 1.415, 1.419.

U.S. Postal Service mail). *All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.,* Washington, D.C. 20554.

352. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

353. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

354. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

355. Parties should send a copy of their filings in CC Docket No. 01-92 to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A266, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

356. Parties should send a copy of their filings in WC Docket No. 06-122 to Jennifer McKee, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A423, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

357. Parties should send a copy of their filings in WC Docket No. 99-200 to Marilyn Jones, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A423, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

358. Documents in CC Docket Nos. 01-92, 99-200, and WC Docket No. 06-122 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

C. Initial Regulatory Flexibility Analysis

359. As required by the Regulatory Flexibility Act of 1980,[892] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix [[__]]. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on or before the dates indicated on the first page of this Notice.

[892] *See* 5 U.S.C. § 603.

D. Final Regulatory Flexibility Analysis

360. Pursuant to the Regulatory Flexibility Act (RFA),[893] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the Report and Order concerning the possible significant economic impact on small entities by the policies and actions considered in the Report and Order. The text of the FRFA is included in Appendix [[_]].

E. Paperwork Reduction Act

361. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,[894] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

F. Accessible Formats

362. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

G. Congressional Review Act

363. The Commission will include a copy of this Order on Remand and Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

VIII. ORDERING CLAUSES

364. Accordingly, IT IS ORDERED that, pursuant to Sections 1–4, 201–209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, and Sections 601 and 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151–154, 157 nt, 201–209, 214, 218-220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503, and sections 1.1, 1.411–1.429, and 1.1200–1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411–1.429, 1.1200–1.1216, the ORDER ON REMAND AND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING ARE ADOPTED.

365. IT IS FURTHER ORDERED that Parts [[__]] of the Commission's rules, 47 C.F.R. § [[__]] are AMENDED as set forth in Appendix A hereto.

366. IT IS FURTHER ORDERED, in light of the opinion of the United States Court of Appeals for the District of Columbia Circuit in *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), we consider our obligations met from the writ of mandamus issued in *In re Core Communications, Inc. on Petition for Writ of Mandamus to the Federal Communications Commission*, D.C. Cir. No. 07-1446 (decided July 8, 2008).

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[893] *See* 5 U.S.C. § 603. The RFA, *see* U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("Small Business Act").

[894] *See* 44 U.S.C. § 3506(c)(4).

367. IT IS FURTHER ORDERED that this REPORT AND ORDER, ORDER ON REMAND, AND FURTHER NOTICE OF PROPOSED RULEMAKING shall become effective 30 days after publication of the text of a summary thereof in the Federal Register, pursuant to 47 C.F.R. §§ 1.4, 1.13, except for the information collections, which require approval by OMB under the PRA and which shall become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date(s).

368. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER AND ORDER ON REMAND, including the Final Regulatory Flexibility Analyses and Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

369. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this FURTHER NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Analyses and Initial Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX D

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW Washington,
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October 24, 2008

Re: Notice of Written *Ex Parte* Presentation (WC Docket 05-337; CC Docket 96-45; WC Docket 06-122; CC Docket 01-92)

Dear Ms. Dortch,

Free Press submits this written *ex parte* filing to update the record on particular issues in the Commission's open dockets on Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92), and related Universal Service Fund (USF) dockets (WC Docket No. 05-337 and CC Docket No. 96-45).

In this *ex parte* we provide our analysis and recommendations on the draft ICC-USF reform proposal ("Draft Proposal") currently scheduled for a full Commission vote on November 4th. We first outline the Draft Proposal (as we understand it), then offer recommendations on how to modify and implement this plan in a manner that is fair, efficient, reasonable, and consumer friendly.

Ultimately, with our recommendations incorporated, we feel that the Commission can and should adopt both a Report and Order *and* a Further Notice of Proposed Rulemaking at the November 4th open meeting. We recommend that the Report and Order establish a solid framework for transitioning the ICC system to cost-based rates and establish a solid framework for incorporating broadband into the USF. The Further Notice should then deal with most of the implementation details of these frameworks (and do so in a three to six month comment cycle with three to six additional months to move to a final Order). While there is general consensus in the record that ICC rates should be lowered and that USF must be modernized, the implementation details that achieve these outcomes are what causes much of the dispute. A Report and Order with a solid transition framework and a Further Notice with firm tentative conclusions will move this debate beyond the current impasse while still addressing many of the concerns of the commenters who would rather the Commission delay this entire matter.

Bifurcation of Commission action on November 4th into these two items recognizes that even if every element of the policy were to be contained in a single Order, the administrative mechanisms needed to implement the Order and transition the regulatory regimes would take time and further input to devise and settle. An Order will delimit the start and end points of reform, establishes the first steps, and chart a clear path forward—while an FNPRM opens an opportunity for further deliberation on the means.

Our primary interest in these proceedings is to ensure consumers are treated fairly and not unduly burdened. We want to make certain that consumers, not just particular private companies, benefit from these reforms. With the appropriate changes made to the Draft Proposal, the Commission can usher in long-overdue reforms that are equitable, minimize consumer burden, increase efficiency, and bring affordable high-quality broadband to every region of the nation.

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The Commission's Draft ICC-USF Reform Proposal

The draft ICC-USF reform proposal on circulation at the Commission is designed to achieve two important policy objectives: reforming the system of intercarrier compensation (albeit only on the terminating side) and modernizing the Universal Service Fund. Our understanding of the elements of the Draft Proposal is based on our conversations with the Chairman's office on October 17, 2008, and on various media reports and analyst statements.[1] Trying to glean the details of such a comprehensive proposal in this fashion is far from ideal. However, we recognize that most of the ideas on the table are present in the record in some form. Based on what we do know, the proposal needs further modifications in order to adequately achieve the policy objectives in a manner that is consistent with the public interest principles of the Communications Act.

ICC Reform Elements of the Commission's Draft Proposal

The Commission proposes a 10-year phase down of all terminating access rates to a unified reciprocal compensation rate within each state, set by state regulators. In the first two years of the 10-year path, intrastate rates are lowered to interstate levels. In the fifth year, the states will have set a rate that is close to reciprocal compensation levels (RC). By the end of the 10-year process, all rates within each state must be uniform, at a level of forward-looking reciprocal compensation.

This lowering of terminating access charges will result in a reduction in revenues for those companies who are current net recipients of access fees -- local exchange carriers (though we should note here that access minutes will likely continue to decline as the rates are phased down, an aspect we comment on in detail below). In order to "offset" this decline in revenue, the Commission proposes to raise the Federal Subscriber Line Charge (SLC) for primary residential and single-line businesses by $1.50, to a total of $8.00 per month. The multi-line business SLC will increase to $11.50 per month. These increases will come as the Federal-State Joint Board is tasked with the determining an appropriate national rate benchmark, and deciding whether further SLC increases will be allowed.

Since there is a widely-held belief that above-cost access charges are an implicit subsidy for universal service, the Commission's Draft Proposal also offers a recovery mechanism for certain carriers operating in high-cost areas. Rate-of-Return (RoR) carriers operating in these areas will be able to access increased universal service support from the interstate common line support program (ICLS). The Commission estimates that this will amount to $500 million in total additional funds over the entire first 5-year period, and will be approximately $200 million to $300 million in each year following. We do not know if this additional funding is capped, or remains uncapped like the current ICLS funds. We also do not know the details on how the amount of support for each carrier is calculated (i.e. whether or not it is based on forward-looking costs, or embedded costs as

1 *See* Ex Parte communication of Free Press, WC Docket 05-337; CC Docket 96-45; WC Docket 06 122; CC Docket 01-92, October 20, 2008; *see also e.g.*, Joelle Tessler, "FCC chair eyes fallow TV airwaves for broadband", *Associated Press*, October 15, 2008. Therefore, we alone are responsible for the characterization of the Commission's Draft Proposal in this *ex parte*, and make no claims as to the accuracy of our characterization, since we have never actually seen the circulated draft.

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currently calculated for ICLS). Under the Draft Proposal, price-cap (PC) regulated carriers will not be able to obtain any access recovery funds (ARF) unless they petition the Commission and show their costs. It is unclear to us whether this cost-showing process will rely solely on the regulated cost-structure of a carrier's business, or if it considers all revenue and costs (e.g. broadband, IPTV, directory services, etc...)

We understand the Draft Proposal will deal with the issue of phantom traffic by requiring that all providers identify their traffic, or face the possibility of being charged the highest possible access rate.

We also understand that voice-over-Internet-protocol (VoIP) traffic will be classified as an information service. This change in policy has substantial implications for the ability of VoIP providers to obtain reasonable interconnection arrangements with other carriers. This move would likely increase the level of uncertainty in the access charge regime precisely at a time when the Commission is seeking to provide certainty. By declaring VoIP an information service, the structure of Section 251 and the entire industrial interconnection regime is called into question. This is a very dangerous move, as there is no parallel regime under Title I to ensure competitive access. This element of the reform package ***must*** be reviewed in a Further Notice to prevent substantial unintended consequences.

USF Reform Elements of the Commission's Draft Proposal

The Commission's Draft Proposal aims to reform the Federal Universal Service Fund (USF) by making fundamental changes to the contribution methodology, and requiring the offering of broadband service as a condition for USF support.

First, the Commission proposes to move the contributions system away from reliance on interstate telecommunications revenues to a numbers-based assessment. As we understand it, there will be a flat $1 per month fee assessed on all assigned telephone numbers, exempting pre-paid wireless numbers and Lifeline program numbers, but no exemption for additional "family-plan" numbers. According to NRUF, this amounts to nearly 617 million numbers.[2] At a $1 per month per number, this equates to about $7.4 billion per year, or approximately $100 million short of the 2008 projected total size of the Fund. Because of this and likely future shortfalls, the Commission's Draft Proposal will place some revenue-based assessment on businesses. The Commission believes that under this methodology the consumer's USF burden will decrease from approximately 48 percent of the fund to 42 percent of the fund.

On the distributions side, the Commission's Draft Proposal will freeze High Cost Fund support at the current level for each study area. The Commission will eliminate the Identical Support Rule (see below). The Commission's proposal will require that all USF-supported providers offer broadband to 100 percent of customers in their service areas within 5-years, with broadband defined

2 "Numbering Resource Utilization in the United States, NRUF data as of December 31, 2007", Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, August 2008.

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as a service capable of providing a 768 kilobit per second (kbps) or higher connection in one-direction. Carriers are obligated to cover at least 20 percent of their unserved territory in the first year, and an additional 20 percent in each of years 2-5 (leading to 100 percent at the end of year five).

If a carrier is unable to meet these obligations at the current level of study-area level support, then the study area is put up for a reverse auction, with the reserve price being the current level of support. Bidders who participate in the reverse auction will be first ranked by the speed of their proposed broadband service, then by the level of their bid (i.e. broadband speed is given priority over the bid price). If a winning bidder is a new entrant, they will not be under the same buildout timeline as the incumbent. We are uncertain as to the length in time between reverse auctions, or if there will be future auctions at all for a given study area.

If no entity bids to offer support, then the study area is declared unserved. We understand that in this situation, the current carrier of last resort (COLR) for an un-bid study area will maintain their current level of High Cost support and will not be under any broadband obligations for that study area.

The Commission's Draft Proposal also creates a $300 per year Broadband Low-Income pilot project. We are uncertain as to how this program will be administered, but we believe it is intended to lower the cost of residential broadband for qualifying participants to the same price as lifeline-supported telephony service.

Finally, we understand that while the Commission's Draft Proposal eliminates the current Identical Support Rule, it does not envision a one-supported-provider per study area approach. The proposal caps the level of wireless CETC support at $1.25 billion per year (the estimated current level), but requires all CETCs to file cost studies to determine if they qualify for support. Support will only be provided if a CETCs costs exceeds a national benchmark (we believe in the Draft Proposal this is established as the average cost per line benchmark of approximately 135 percent).[3] We are uncertain as to the details of the process for a CETC to file cost information.

If in a given study are no wireless CETC agrees to make a cost-showing, then that study area undergoes a mobility reverse auction with the reserve price set at the lowest total amount of support given to a CETC in a particular study area.[4] CETCs would still have the same broadband obligations as incumbents.

Ultimately, it is assumed that the total amount of money going to wireless CETCs will be reduced substantially, and these funds redirected to meet the increased obligations on ICLS due to the changes in ICC.

3 We are actually unsure if this was the benchmark (i.e. the *Ninth Order* benchmark) or if it was the 138 percent national urban rate benchmark established in the 2003 *Order on Remand*, or some other benchmark entirely.
4 We are uncertain about this particular aspect, since under the Identical Support Rule, per-line support is identical across CETCs in a given study area. However, it could be that since each ETC serves a different amount of customers, the reserve price to serve the entire area would be set at the least total amount of support among current CETCs (i.e. the amount going to the CETC with the fewest amount of customers), with the winner required to offer service to any requesting customer within the study area.